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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/500,192

02/25/2005

Norihisa Hirota

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26389

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01/20/2010

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EXAMINER

KASHNIKOW, ERIK

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

01/20/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/500,192	<b>Applicant(s)</b> HIROTA ET AL.	
	<b>Examiner</b> ERIK KASHNIKOW	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collette et al. (US 5,520,877) in view of Jabarin et al. (US 4,476,170) Gittner et al. (US 4,177,239) and Sugiura (US 4,641,758).

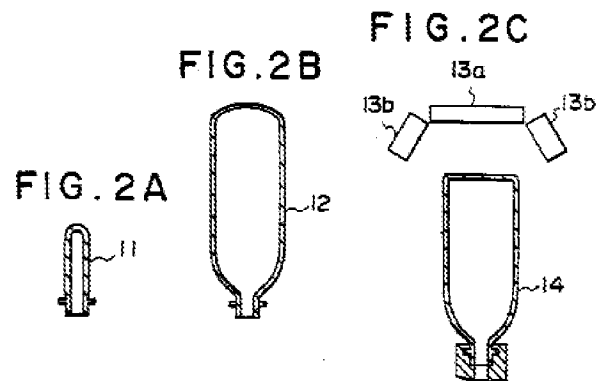
3. In regards to claim 2 Collette et al. teach a method for a biaxially orientated bottle shaped container (column 6 lines 13-16). Collette et al. teach an initial step of blow molding the preform to a size larger than the final product size (figure 9 and column 9 lines 53-58). Collette et al. then teach heat shrinking the intermediate product (figure 11 and column 10 lines 29-54). Collette et al. then perform a second step of blow molding to obtain the final product (column 10 lines 54-56).

4. While Collette et al. teach an article made by the method from which a biaxially oriented polyester container is formed through a process which comprises the steps of a primary and secondary blow molding, and a primary product larger than the final product they are silent with regards to the unrestrained bottom during the primary blow molding.

5. Jabarin also teaches biaxially stretched blow molded containers (column 3 lines 36-46).

6. Jabarin teaches that it is known in the art to blow mold containers such as bottles utilizing a blow molding process where in mechanical axial stretching takes place in a first stage but not in a later stage (column 7 lines 35-44)

7. One of ordinary skill in the art at the time of the invention would be motivated to modify the invention of Collette et al. with that of Jabarin because the method of Collette et al. which offers would benefit from the method of Jabarin which produces a polyester bottle having increased resistance to carbon dioxide and oxygen gas permeation as well as saves time and money by eliminating the need for a stretch rod (column 3 lines 23-25).



8. While Collette et al. and Jabarin teach an article made by the method from which a biaxially oriented polyester container is formed through a process which comprises the steps of a primary and secondary blow molding, and a primary product larger than the final product they are silent with regards to a uniformly orientated and thin walled bottom.

9. Sugiura teach self standing bottles for holding liquids (column 1 lines 5-10). In regards to claim 1 and 2 Sugiura teach containers with thin biaxially orientated bottomed bottles (claim 1), and that the entire bottle has uniform thickness for

mechanical strength (column 8 lines 45-50). However Sugiura is silent regarding the biaxial orientation being uniform.

Gittner et al. teach that it is known in the art to uniformly orient the bottom of container such as bottles (column 9 lines 50-56).

10. In regards to claim 1, while Collette et al. Jabarin Gittner et al. and Sugiura are silent regarding X-ray diffraction values and orientation parameter values, it would be inherent that an article made of the same material in the same way would have the same properties.

11. One of ordinary skill in the art at the time of the invention would be motivated to modify the invention of Collette et al. and Jabarin with that of Sugiura and Gittner et al because the invention of Sugiura offers good mechanical rigidity (column 1 lines 35-41) whereas the container of Gittner et al. offers a bottom whose quality of characteristics is more inline with the rest of the portions of the bottle (column 3 lines 30-43).

### ***Response to Arguments***

12. Applicant's arguments, see arguments, filed 09/30/09, with respect to the rejection(s) of claim(s) 1 and 2 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the previously cited references.

13. In regards to Applicant's additional arguments regarding claim 1 Examiner notes that while Jabarin, Sugiura and Gittner do not disclose all the features of the present

Art Unit: 1794

claimed invention, they are used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, and in combination with the primary reference, discloses the presently claimed invention. If the secondary reference contained all the features of the present claimed invention, it would be identical to the present claimed invention, and there would be no need for secondary references. In this particular instance Gittner and Sugiura are being used to teach thin walls with uniform biaxial orientation and not the X-ray diffraction and orientation parameter values, these are being rejected as being inherent over the process described in this action.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (Second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow  
Examiner  
Art Unit 1794

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1794